

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 56 OF 2012

Wednesday, this the 19th day of June, 2013

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Telson Norohna
Senior Technical Assistant
Centre for Marine Living Resources & Ecology (CMLRE)
Ministry of Earth Sciences, Block – C, VI floor
Kendriya Bhavan, P.B.No.5415, CEPZ PO
Cochin – 682 037

... Applicant

(By Advocate Mr. Shafik M.A)

versus

1. Union of India represented by the Secretary
Ministry of Earth Sciences
Government of India
New Delhi – 110 001
2. The Director (Admn)
Ministry of Earth Sciences, Mahasagar Bhavan
Block 12, CGO Complex, Lodhi Road
New Delhi – 110 003
3. The Director
Centre for Marine Living Resources & Ecology (CMLRE)
Ministry of Earth Sciences, Block – C, VI floor
Kendriya Bhavan, P.B.No.5415, CEPZ PO
Cochin – 682 037

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 12.06.2013, the Tribunal on 19.06.2013 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, who was initially employed at the Opto-Electronics Factory, Dehradun in the Department of Defence Production, w.e.f. 13.03.1989 in the scale of Rs 1400 – 2300 had joined the respondents' organization on deputation in the same pay scale of Rs 1400 – 2300 as

Technical Assistant on 29-11-1991. He was appointed in the very same post w.e.f. 20-05-1993.

2. In the very same organization, he was later on inducted in the post of Senior Technical Assistant in the scale of Rs 1640 – 2900 on deputation.

And, as in the case of Technical Assistant, he was promoted to the same post of Sr. Technical Assistant in the said scale w.e.f. 02-12-1998.

3. The Assured Career Progression Scheme (ACP for short) had been introduced effective from 09-08-1999. Of course, the applicant having been granted one promotion from T.A. to Sr.T.A., no benefit under the ACP scheme was at that time afforded to him. Had he not been given the promotion to the scale of Rs 1640 – 2900, he would have become eligible for financial upgradation under the ACP Scheme in the same scale w.e.f. 13-03-2001 i.e. on completion of 12 years of service reckoned from 13-03-1989, i.e. his initial appointment in the scale of Rs 1400 – 2300 in the Opto Electronics Factory.

4. The Pay scale of Rs 1400 – 2300 was stated to have been revised to Rs 5000 – 8000 in the wake of the acceptance of the Recommendations of the V Central Pay Commission and likewise, the pay scale of Rs 1640 – 2900 had been revised to Rs 5500 – 9000.

5. The VI Pay Commission Recommendations were accepted by the Government and Revised Pay Rules (2007) came into force with retrospective effect from 01-01-2006. As per the above Rules, while revising the pay scales, the earlier pay scale of Rs 1400 – 2300 and Rs 1640 – 2900

were merged in a broad band pay scale of Rs 9300 – 34800 with Grade Pay of Rs 4,200/- . In respect of the respondents' organization too the above mentioned merger of Jr Technical Assistant, Technical Assistant and Sr. Tech Assistant had taken place w.e.f. 01-01-2006 and the pay band is Rs 9300 – 34800 with GP of Rs 4,200/-, vide order dated 17-01-2012 (copy produced at the time of arguments as also available at Annexure A-14). The aforesaid order also spelt out that all the officers appointed on or before the effective date shall be deemed to have been appointed in the grade and they shall be members of the service in the respective grades and the regular continuous service of officers shall count for the purpose of probation, qualifying service for promotion, confirmation and pension in the service.

6. Modified Assured Career Progression Scheme (MACP Scheme for short) had substituted the erstwhile ACP Scheme, w.e.f. 01-09-2008. In the said scheme, it has been provided for that **Promotions earned/upgradations granted under the ACP scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.**

7. The respondents had vide Annexure A-2 order dated 01-01-2010 afforded 2nd MACP to the applicant taking into account the promotion earned in 1998 by the applicant. Thus, the 2nd MACP was granted to the applicant as on 02-02-2008. The extent of fixation of pay was that from the GP of Rs 4,200 the same was increased to Rs 4,600 in the same PB 2 of Rs 9300 – 34800. This was later on modified by Annexure A-3 order whereby, the upgraded G.P. was enhanced from Rs 4,600 to Rs 4,800/-.

8. The applicant had penned a representation dated 18th August, 2011, requesting for the following:-

11. *Accordingly, your kind intervention is solicited to resolve the following prayer submitted by me to the Ministry based on details mentioned above.*

(i) *The entry level grade of my government servive w.e.f. 13.03.1989 is in PB-2 Rs.9300-34800 + GP 4200 (revised)*

(ii) *I may be granted the first ACPs to the grade of PB-3 Rs.15600-39000 + Rs.5400 (GP) w.e.f. 19.05.2004 considering the3 completion of 12 years of service in the same grade and fulfilling all the eligibility conditions stipulated in the ACPs rules and further clarifications issued by DOPT.*

(iii) *I may be granted the second MACPs to the next immediate higher grade of PB-3 Rs.15600-3900 +Rs.6600 (GP) w.e.f. 13.03.2009 on completion of 20 years of service in the same grade and fulfilling all the eligibility conditions stipulated in the MACPs rules and further clarifications issued by DOPT.*

(iv) *The corrigendum issued by MoES vide No.MoES/25/32/2009-Estt. Dated 28.10.2010 may be amended accordingly.”*

9. Respondents, vide Annexure A-1, rejected the representation, giving the following reasons:-

(i) *Shri Telson Noronha was appointed as Supervisor (T/MO in the pay scale of Rs.1400-2300 (pre-revised) as on 13.03.1989 in the Ministry of Defence and he was appointed as Technical Assistant in SSC/CMLRE as on 24.11.1991 on transfer on deputation basis in the pay scale of Rs.1400-2300/- (pre-revised). He was appointed on direct recruitment basis as Technical Assistant in SSC/CMLRE w.e.f. 20.05.1993. He was promoted to the post of Senior Technical Assistant ion SSC/CMLRE in the pay scale of Rs.1640-2900/- (pre-revised) w.e.f. 02.12.1998.*

(ii) *Based on the above, he completed his 12 years of regular service as on 19.05.2005 and could be considered for first ACP w.e.f. 20.05.2005 had he not been promoted to the next grade by that time. Meanwhile, the scheme of MACP came into existence. The regular service for the purpose of MACPs has been counted as per para 9 of MACPs OM dated 19.05.2009. Based on this, Shri Noronha completed 20 years of regular service as on on 12.03.2009 (starting from the first Direct Recruitment) and 10 years in the same grade Pay of STA as on 01.12.2008. Accordingly, he has been granted his 2nd MACP w.e.f. 02.12.2008 in the grade pay of Rs.4800/- (from Rs.4200 – Rs.4600 – Rs.4800).”*



10. The case of the applicant is that in view of the amalgamation of the two posts, i.e. T.A. and S.T.A. his promotion from TA to STA should be ignored for the purpose of working out the entitlement to MACP. Thus, according to him, he is due the first ACP on completion of 12 years of service from 13-03-2001 and second MACP from 13-03-2009.

11. The prayer thus made, vide para 8 is as under:-

- (i) *To call for the records relating to Annexures A-1 to A-11 and to quash Annexure A-1, A-2 and A-3 being illegal, arbitrary and against the provisions of law.*
- (ii) *To declare that the applicant is entitled to reckon his service with effect from 13.03.1989 in the revised grade of PB-2 Rs.9300-Rs.34800 GP Rs. 4200 and eligible to consider his initial services of 12 years for grant of ACPs with effect from 13.03.2001 to the next higher grade in hierarchy of PB-3 Rs.15600-39100n GP 5400 and to grant all consequential benefits including arrears of salary and disburse other financial benefits with 18 % penal interest.*
- (iii) *To declare that the applicant is entitled to reckon his continuous service with effect from 13.03.1989 and on completion of 20 years, eligible for grant of II MACPs to the next grade of PB-3 Rs.15600-39100 GP 6600 and to grant all consequential benefits including arrears of salary and disburse other financial benefits with 18 % penal interest."*

12. Respondents have contested the O.A. According to them, the applicant whose initial date of appointment was 13-03-1989, could get his promotion within 12 years of his initial entry in 1989 and thus, he was not entitled to the first ACP. His second MACP fell due on completion of 20 years of initial entry or ten years from the date of his promotion, whichever is earlier and in the instant case, as he was promoted as STA on 02-12-1998, his second MACP would fall due on 02-12-2008, while 20 years from initial appointment on 13-03-1989 would be later, on 13-03-2009. Thus, he was granted the 2nd MACP on 02-12-2008. Since his GP was Rs 4,200/-, he was given the 2nd MACP placing his grade pay at Rs 4,800 which is two stages above the GP of Rs 4,200 which he was already drawing.

13. In his rejoinder, the applicant brought out the clarification issued by the DOPT relating to the case of a person who (like the applicant) was earlier serving in one department and had come to another one on deputation and later on absorbed in the latter, all in the same pay scale. The applicant thus contended that past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the present period of service for the purpose of ACPs. The applicant maintained that he joined in the grade pay of Rs 4,200 on 13-08-1989 and completed more than 22 years of service in the same grade. Neither promotion nor ACP/MACP has been granted to the applicant during the above period.

14. In their reply to the rejoinder, the respondents in para 3 stated as under:-

"It is respectfully submitted that the applicant, who was appointed as Technical Assistant in the pay scale of Rs. 1400-2300 (pre-revised, 4th CPC) revised to (Rs.5000-8000 5th CPC) in CMLRE was promoted to the post of STA w.e.f. 20.12.1998 in the pay scale of RS.1640-2900 (pre-revised, 4th CPC) revised to (Rs.5500-9000, 5th CPC). It is submitted that since the pre-revised pay scale of Rs.5000-8000 (5th CPC) and Rs.5500-9000 (5th CPC) have been merged and placed in PB-2 with grade pay of Rs.4200 (6th CPC), the promotion earned by the applicant in pre-revised pay scale of Rs.5500-9000 w.e.f. 02.12.1998 which now carries the same grade pay of Rs.4200 would be ignored and he is eligible for grade pay of Rs.4600 w.e.f. 01.09.2008, i.e. the date of inception of MACP. Further on completion of 10 years of service in the promotional grade of Senior Technical Assistant, w.e.f. 02.12.2008 to be reckoned w.e.f. 02.12.1998, the applicant has been granted 2nd MACP in the hierarchy of grade pay i.e Rs.4800/-."

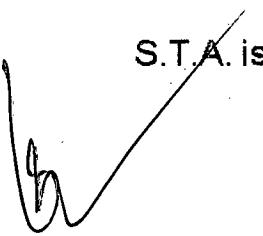
15. Counsel for the applicant strenuously argued that here is a case where the individual, despite 22 years have been passed, has not been afforded a single promotion or benefit under the ACP/MACP Scheme. The

one (promotion) granted to the applicant got merged with the feeder grade and the same has to be ignored as per the MACP Scheme. Thus, the applicant is entitled to two ACP/MACPs, as under:-

- (a) on completion of 12 years – i.e. w.e.f. 13-03-2001 – his pay scale should be in the next higher post according to the provisions of ACP. Since his pay scale in the post of TA/STA was Rs 9300 – 34800 plus GP of Rs 4,200, the same should be replaced by the next pay scale, i.e. 15600 – 39100 plus grade pay of Rs 5,400 attached to the said pay scale .
- (b) on attaining 20 years of service i.e. w.e.f. 13-03-2009, under MACP scheme, he should be afforded the G.P. of Rs 6,600/- since the GP next to Rs 5,400 is only 6,600/-.

16. Counsel for the respondents submitted that the applicant had already drawn one promotion and the same was at a time when no merger took place. As such, his entitlement is only for 2nd MACP after 20 years from 13-03-89 i.e. w.e.f. 13-03-2009 and the same would be only increase in grade pay from Rs 4,200 to Rs 4,800/-.

17. Arguments were heard and documents perused. When two posts (feeder as well as promotional) are merged, then the promotion earned would be ignored for the purpose of grant of ACP/MACP. The question whether this applies to the case of the applicant. The applicant claims that the same is applicable while the respondents' view is other wise. According to the respondents, vide para 7 of their reply, there was no concept of merger of the feeder and the promotional posts of respectively the T.A. and S.T.A. is prior to 01-01-2006.



18. Counsel for the applicant referred to the order dated 17th January, 2012 (Annexure A-14) with particular reference to the second para to state that by virtue of the same, officers appointed on or before the effective date shall be deemed to have been appointed in the grade and they shall be members of the service in the respective grades and the regular continuous service of the officers shall count for the purpose of probation, qualifying service for promotion, confirmation and pension in the service.

19. For working out the entitlement of the applicant, the clock has to be set back to various dates of the past. Thus, the applicant had been initially appointed on 13-03-1989 as TA (pay scale Rs 1400 – 2300) and was promoted as STA in the pay scale of Rs 1640 – 2900/- on 02-12-1998. This constituted one promotion. It is to be seen at this juncture whether there was any merger of the said posts either at that time or retrospectively. The applicant relied upon clarification given vide OM dated 10-02-2000 to contend that by virtue of the same the promotion granted to him as STA which post was later on merged with that of TA should be ignored. The said OM dated 10-02-2000 as extracted in Ground D reads as under:-20.

"Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade".

20. Thus, the applicant claims that since the posts of TA and STA got merged, the applicant is entitled to have the promotion granted ignored and as on 13-03-2001 he should be placed in the next higher grade of Rs.8000 – 275 – 13500 in the hierarchy and correspondingly placed in the

21. The above contention has been examined. In their clarification dated 10-02-2000, the DOPT considered the case of two pay scales having been merged as per the V Pay Commission Recommendation. That was what was known as Rationalization. For example, two pay scales 1350 -2200 and 1400 -2300 were clubbed and placed in the scale No. S-8 (Rs 4500 – 7000). Similarly, the pay scale of Rs 1400 – 2600 and Rs 1600 – 2660 have been clubbed and replaced by Scale No. 9, (Rs 5000 – 8000). The pay scale of Rs 1640 – 2900 had not been clubbed with any other pay scale and the replacement scale for the same was Rs 5500 – 9000. Thus, the erstwhile pay scale of Rs 1400 – 2300 and Rs 1640 – 2900 remained in two different pay scales and they were not clubbed. Thus, as on 02-12-1998 when the applicant got his first promotion, there was no clubbing. The question of his promotion being ignored and of his claim that on completion of 12 years he should be placed in the next higher grade of Rs 8000 – 13500 does not arise.

22. Thus, our finding is that the applicant had availed of one promotion in 1998 consequent to which he would not be entitled to the first financial upgradation, which is only in lieu of promotion.

23. The ACP scheme had been replaced by MACP scheme. The period of 12 years had been reduced to 10 and instead of 12 as in the case of ACP, there would be 3 MACP. Since the applicant had availed of one promotion, he is entitled to the 2nd MACP on completion of 20 years of his initial service or 10 years from the last promotion, whichever is earlier. In the instant case, the period of 20 years would be over as on 13-03-2009 while the period of 10 years from last promotion, as on 02-12-1998. Thus, he is

entitled to the grant of 2nd MACP (which had already come into existence from 01-09-2008). The extent of benefit under MACP is restricted to one notional increment of 3% coupled with next higher Grade pay. The respondents initially granted the G.P. of Rs 4,600/- as the applicant was placed in 4,200/- earlier. However, by Annexure A-3, the same has been revised to Rs 4,800/-.

24. The applicant attempted to justify his claim by stating that there has been a merger of the pay scales Junior Technical Assistant/Technical Assistant/Senior Technical Assistant in his erstwhile department (Opto Electronic Factory) vide Annexure A-14. Since the applicant had switched over to the respondents' organization, the said order is of no avail to him. In addition, the clarification No. 41 appended to OM dated 18-07-2001 explains the provisions which is reproduced below:-

Point of Doubt	Clarification
1. A cadre consists of 4 grades – 'A', 'B', 'C' and 'D' (in ascending order). Upon restructuring of a cadre, Grade 'B' is abolished from a date subsequent to 09-08-1999. Employees in Grade 'A', who are eligible for financial upgradation on or after 9-8-1999 but before the date of effect of restructuring, get first/second financial upgradation in Grade 'B' and 'C' respectively, but those who become eligible for financial upgradation after restructuring has been effected, are entitled to first financial upgradation in Grade 'C' and second financial upgradation in Grade 'D'. This is anomalous. The cases of earlier set of employees should be reviewed and they may be allowed financial upgradations as applicable to the latter category of employees.	The benefit of ACP Scheme is to be allowed as per the hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPS. Cadre/hierarchical structures are never static and are always subject to review based on recommendations of Pay Commissions / Expert Committees or otherwise and it is not possible to review the entitlements under ACPS already earned every time a cadre is reviewed. ACPS is only a temporary solution to provide relief to stagnating employees and the lasting solution for stagnation lies in review of cadre structures, as regular promotions will be earned in such restructured grades. All the employees will benefit from such cadre restructuring.



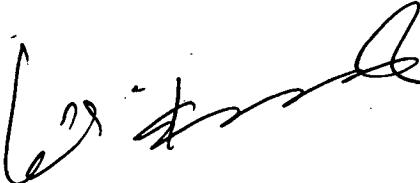
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25. Similarly, the change in nomenclature from Supervisor to Chargeman II in the parent department is of no consequence, since the pay scale admittedly remained the same. On the date of issue of the letter dated 10-05-1993, the pay scale of the applicant had been the same i.e. 1400- 2300/-.

26. Thus, the OA is devoid of merits and is therefore, **dismissed**, however, with no orders as to cost.

Dated, the 19th June, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs